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IN THE

Supreme Court of the United States

No. 838.

FREDERICK L. MOREHEAD, AS THE WARDEN OF THE CITY PRISON IN THE BOROUGH OF BROOKLYN,

Appellant,

vs.

PEOPLE, EX REL. JOSEPH TIPALDO,

Appellee.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF IN SUPPORT THEREOF.

JOHN W. BRICKER,
Attorney General of Ohio,
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Appellee.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

May It Please the Court:

The undersigned, as counsel for the state of Ohio, respectfully moves this Honorable Court for leave to file the accompanying brief as amicus curiae, in support of appellant in the above-entitled cause.

JOHN W. BRICKER,
Attorney General of Ohio,
Counsel for the State of Ohio, as Amicus Curiae.

Of Counsel:

WILLIAM S. EVATT,
Chief Counsel;
ISADORE TOPPER,
JOHN K. EVANS,
Assistant Attorneys General of Ohio;
MARVIN C. HARRISON,
Special Counsel.

BRIEF OF JOHN W. BRICKER, ATTORNEY GENERAL OF OHIO, AS AMICUS CURIAE.

I.

PRELIMINARY STATEMENT.

This brief is filed on behalf of the state of Ohio because the constitutionality of practically all of the legislation with reference to minimum wages for women and minors in Ohio depends upon legislation almost identical to that which is challenged in this case.

Prior to the enactment of the Ohio Law (House Bill No. 681, enacted by the General Assembly of Ohio in 1933) women and minors were employed in many industries in Ohio at wages dictated by "sweat-shop" conditions and standards. Recognizing the seriousness of the situation, caused by "sweat-shop" conditions, to employes, employers, and the general public, the Legislature attempted to remedy the situation by enacting a Minimum Wage Law for women and minors (Sections 154-45d to and including Section 154-45t, General Code of Ohio), which in substance authorized certain state officials, after public hearings, to fix minimum fair wages for women and minors in any industry where there was a finding that "oppressive and unreasonable wages" were being paid to them. The Ohio Minimum Wage Law provides for a division of minimum wage in the department of industrial relations of the state of Ohio and is similar in its administrative features to the Minimum Wage Law of the state of New York.

The statement of the purpose of the Ohio Law was set forth in Section 18 thereof and reads as follows:

> "This act is hereby declared to be an emergency law, necessary for the immediate preservation of the public health, peace and safety. The reason for such necessity lies in the fact that sweat-shop evils are growing throughout the state of Ohio; that wages, so low as to be detrimental to the health and welfare of thousands of workers in industry, are being paid by many employers; that payment of such low and oppressive wages encourages and promotes 'cut-throat' competition in industry to the detriment of employers and employes alike and to business and industry in general. This act shall therefore go into immediate effect."

After the Ohio Minimum Wage Law was enacted by the Legislature of the state of Ohio, the superintendent of the division of minimum wage was appointed in accordance with the terms of the act.

The Ohio Law does not attempt to regulate wages generally. It does not fix a "living wage" irrespective of the nature of the work done or the value of the services rendered. Only where a substantial number of women and minors in any occupation are receiving "oppressive and unreasonable wages" defined in Section 1 of the act as "a wage which is both less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health", may an investigation be made to determine whether the wages are fairly commensurate with the value of the services rendered. If such investigation, by the director of the department of industrial

relations or the superintendent of the division of minimum wage in the department of industrial relations, finds that the wages are not fairly commensurate with the value of the services rendered, a representative wage board, made up of three (3) employers in the industry, three (3) employes in the industry, and three (3) disinterested representatives of the public, acting on convincing proof, may recommend to the director of the department of industrial relations the establishment of minimum fair wage standards for the particular occupation in question. After a public hearing, the director of the department of industrial relations may put into effect such minimum fair wage standards. For a period of at least three (3) months the standards are directory orders only, to be vindicated only by the force of publicity. If after such trial period, the non-observance of the directory orders is so persistent as to threaten the maintenance of the standards established, the director of the department of industrial relations may, after a public hearing, make the observance of the fair minimum wage standards mandatory and their violations subject to the penal law. In addition, the Ohio Minimum Wage Law for women and minors permits differentiation in classes of service, lower minimum standards for learners and apprentices and special licenses for those whose earning power has been impaired. The rights and interests of every group affected are scrupulously dealth with and safeguarded. The Ohio Minimum Wage Law for women and minors does not set up any arbitrary wage standard. In determining a fair wage, a wage fairly and reasonably

commensurate with the value of the services rendered, all relevant circumstances affecting the value of the services rendered may be considered.

These features of the Ohio Law pointed out above are practically identical to the New York Law in question with the exception that the directory orders, before they can be made mandatory, under the New York Law, must be in effect nine (9) months rather than the three (3) months' period required by the Ohio Law.

After investigations, as required by law, the director of the department of industrial relations of the state of Ohio convened a wage board consisting of three (3) representatives of the women employes in the laundry industry, three (3) employers therein, and three (3) disinterested members of the public to make recommendations as to a "fair wage" for women and minors employed in such industry. Later a similar board was convened for the dyeing and cleaning industry. The director of the department of industrial relations, after public hearings, accepted the recommendations of these wage boards and issued directory orders fixing a fair minimum wage for women and minors employed in the laundry and dyeing and cleaning industries. Violation of such directory orders was made punishable under the law by publication of the offender's name in a newspaper. After a probationary period of three months of the directory order, and after a finding by the director of the department of industrial relations that the persistent non-observance of such order was a threat to the maintenance of fair minimum wage standards, and after public hearings,

the directory orders were declared mandatory by the director of the department of industrial relations. A violation of a mandatory order under the law is made a misdemeanor.

The last federal census in Ohio revealed that approximately five hundred and thirty-nine thousand (539,000) women and minors were employed in Ohio industries. The files in the department of industrial relations in the state of Ohio show that there are approximately two thousand (2,000) women and minors employed in the dyeing and cleaning industries in Ohio and approximately fifty-five hundred (5,500) women and minors employed in the laundry industry in Ohio. The validity of the Ohio Minimum Wage Law for women and minors has been challenged as to its constitutionality in the United States District Court for Ohio, Southern District, Eastern Division. The main issue in that case is precisely the same as the issue in the case at bar.

II.

POINT OF LAW INVOLVED.

The issue is, whether a sovereign state, in the exercise of its police power, upon a finding that a substantial number of women and minors are employed in a given industry at "oppressive and unreasonable" wages, has the power, after due investigation and public hearings, to fix minimum wages for such women and minors, based upon the reasonable value of their services, without violating the federal Constitution.

III.

SUMMARY OF ARGUMENT.

POINT 1.

The Fourteenth Amendment to the Constitution of the United States is not intended to interfere with the reasonable exercise of the police power of the state to enact laws for the protection and promotion of the public health, peace, morals, safety and welfare, provided such legislation is reasonable and has a real and substantial relation to the public object sought to be accomplished.

POINT 2.

The due process clause of the Fourteenth Amendment to the Constitution of the United States cannot be construed to destroy the police power of the state, nor can the police power of the state be exercised contrary to the Fourteenth Amendment.

POINT 3.

The right and liberty of contract, including contracts between employer and employe, is not a universal or unlimited right, and it may be regulated whenever necessary for the public good or welfare.

A. There is no such right as absolute liberty of contract.

B. The right and liberty to contract between an employer and his employe may be regulated for the public good or welfare.

POINT 4.

The Legislature determines the necessity of legislation for the promotion of the public welfare and the appropriate measures to remedy existing evils inimical to the public welfare. In determining the validity of such a measure the Court is concerned only with the power of the Legislature to enact the statute and is not concerned with the policy, the wisdom, the expediency, or the fairness of the legislation.

A. Enactment of minimum wage laws for women and minors in sixteen states clearly discloses an existing evil in reference to the wages of such employes.

POINT 5.

There is a presumption that legislation is constitutional until the contrary clearly appears.

POINT 6.

A minimum wage law passed by a state Legislature which permits the fixing of a minimum fair wage for women and minors, such wage being fixed at the reasonable value of the services rendered, in those industries where it is found that oppressive and unreasonable wages are being paid to a substantial number of women and

minors, is an act which relates to and promotes the public health, welfare and safety, and is a reasonable and valid exercise of the police power of a state and violates no provision of the Constitution of the United States.

A. The economic evils confronting the states.

B. Public welfare requires a state to protect the health of women and minors gainfully employed.

C. Oppressive and unfair wages deter women and minors who are receiving public relief from seeking employment.

D. Police power may be exercised to prevent unfair competition.

E. This Court has on many occasions held that the police power of a state can be exercised to encourage fair competition and to prevent unfair competition.

F. Police power may be exercised to prevent imposition, exploitation and fraud.

POINT 7.

The New York Minimum Wage Law, passed in the light of the decision of **Adkins v. Children's Hospital,** 261 U. S., 525, is supported as to constitutionality by the opinion in that case.

IV.

ARGUMENT.

POINT 1.

THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES IS NOT INTENDED TO INTERFERE WITH THE REASONABLE EXERCISE OF THE POLICE POWER OF THE STATE TO ENACT LAWS FOR THE PROTECTION AND PROMOTION OF THE PUBLIC HEALTH, PEACE, MORALS, SAFETY AND WELFARE, PROVIDED SUCH LEGISLATION IS REASONABLE AND HAS A REAL AND SUBSTANTIAL RELATION TO THE PUBLIC OBJECT SOUGHT TO BE ACCOMPLISHED.

This Court has on numerous occasions held that the Federal Constitution is not intended to interfere with the police power of a state to enact legislation for the protection and promotion of the public health, safety or welfare, provided such legislation is reasonable and has a real and substantial relation to the public object sought to be accomplished.

Barbier v. Connolly, 113 U. S., 27, 31;
Powell v. Pennsylvania, 127 U. S., 678;
Murphy v. California, 225 U. S., 623;
McLean v. Arkansas, 211 U. S., 539;
Louisville & Nashville Railroad Co. v. Melton, 218 U. S., 36, 52;
Muller v. Oregon, 208 U. S., 412;
New Orleans Gas Light Co. v. Louisiana Light Co., 115 U. S., 650;
Nebbia v. New York, 291 U. S., 502.

POINT 2.

THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES CANNOT BE CONSTRUED TO DESTROY THE POLICE POWER OF THE STATE, NOR CAN THE POLICE POWER OF THE STATE BE EXERCISED CONTRARY TO THE FOURTEENTH AMENDMENT.

It is also a familiar rule that neither the contract clause nor the due process clause of the Constitution of the United States is superior to the exercise of the police power of the state. **Chicago B. & Q. R. Co. v. McGuire**, 219 U. S., 549; **Atlantic Coast Line R. Company v. Goldsboro**, 232 U. S., 548, 558. This rule is expressed with clarity by Mr. Chief Justice Hughes, at page 439 in the case of **Home Building & Loan Association v. Blaisdell**, 290 U. S., 398:

> "Undoubtedly, whatever is reserved of state power must be consistent with the fair intent of the constitutional limitation of that power. The reserved power cannot be construed so as to destroy the limitation, nor is the limitation to be construed to destroy the reserved power in its essential aspects. They must be construed in harmony with each other."

The broad power of sovereignty called the police power which may invade the right of contract protected

by the Constitution of the United States, and which invasion has been upheld by the courts of this country many times, is a power that is indefinable and the courts have confessed their inability to form a general definition for that power. By reason of this inability to form a general definition, the courts have constantly dealt with each case separately so that an examination of the cases wherein the exercise of this power has been questioned merely shows the different phases of its application to various subjects. The police power has been exercised in many ways and it generally consists of either regulatory or prohibitory legislation. The various subjects which have received legislative attention because of public interest are too innumerable to mention in this brief.

POINT 3.

THE RIGHT AND LIBERTY OF CONTRACT, INCLUDING CONTRACTS BETWEEN EMPLOYER AND EMPLOYE, IS NOT A UNIVERSAL OR UNLIMITED RIGHT, AND IT MAY BE REGULATED WHENEVER NECESSARY FOR THE PUBLIC GOOD OR WELFARE.

The so-called right or liberty of contract, the protection of which is usually invoked in cases of this type, is not an unlimited or unbridled right or privilege but is a right or privilege which is subordinate to any legislative enactment which has for its object the comfort, the

safety, the convenience, the general prosperity or welfare of society.

Nebbia v. New York, 291 U. S., 502;
Advance-Rumely Thresher Co., Inc., v. Jackson, 287 U. S., 283;
Hardware Dealers Mut. Fire Ins. Co. v. Glidden Co., 284 U. S., 151;
N. Y. & N. E. R. R. Co. v. Bristol, 151 U. S., 556, 567;
McLean v. Arkansas, 211 U. S., 539, 545, 547;
Chicago B. & Q. Co. v. McGuire, 219 U. S., 549, 567;
Legal Tender Cases, 12 Wall., 457, 551.

A. **There Is No Such Right As Absolute Liberty of Contract.**

This Court has held that there is no such thing as the absolute liberty of contract.

Schmidinger v. Chicago, 226 U. S., 578, 579;
Block v. Hirsh, 256 U. S., 135.

B. **The Right and Liberty to Contract Between An Employer and His Employe May Be Regulated For the Public Good or Welfare.**

Holden v. Hardy, 169 U. S., 366;
(Limiting employment in underground mines or workings, and in smelters and other institutions for the reduction or refining of ores or metals, to eight hours a day except in cases of emergency.)
Knoxville Iron Co. v. Harbison, 183 U. S., 13;
(Requiring the redemption in cash of store orders or other evidences of indebtedness issued in payment of wages. See also **Keokee v. Taylor**, 234 U. S., 224.)

Muller v. Oregon, 208 U. S., 412;
(Prohibiting the employment of women in laundries more than ten hours a day.)
McLean v. Arkansas, 211 U. S., 539;
(Making it unlawful to pay minors employed at quantity rates upon the basis of screened coal, instead of the weight of the coal as originally produced in the mine.)
Erie Railroad Co. v. Williams, 233 U. S., 685;
(Providing that railroad employes were to be paid semi-monthly.)
St. Louis Iron Mt. Ry. v. Paul, 173 U. S., 404;
(Providing for the payment on the date of discharge of unpaid wages.)

See also the cases of **Patterson v. The Eudora**, 190 U. S., 169; and **Strathearn Steamship Co. v. Dillon**, 252 U. S., 348.

POINT 4.

THE LEGISLATURE DETERMINES THE NECESSITY OF LEGISLATION FOR THE PROMOTION OF THE PUBLIC WELFARE AND THE APPROPRIATE MEASURES TO REMEDY EXISTING EVILS INIMICAL TO THE PUBLIC WELFARE. IN DETERMINING THE VALIDITY OF SUCH A MEASURE, THE COURT IS CONCERNED ONLY WITH THE POWER OF THE LEGISLATURE TO ENACT THE STATUTE AND IS NOT CONCERNED WITH THE POLICY, THE WISDOM, THE EXPEDIENCY, OR THE FAIRNESS OF THE LEGISLATION.

It is a well established rule that anything which is reasonable and necessary to secure the peace, safety, morals and best interests of the public may be done under the police power and this implies that private rights exist subject to the public welfare. Consequently, the general power of the Legislature to determine what is necessary for the protection of the public interests being well settled, judicial inquiry is limited to the determination of whether the legislative action has a real and substantial relation to an existing public evil and whether or not the particular regulation is reasonable within the limitations of the Constitution. The Legislature is the

judge of mischief and the remedy, and of what should be state policy, subject to the restrictions before mentioned.

McLean v. Arkansas, 211 U. S., 539, 547;
German Alliance Insurance Company v. Lewis, 233 U. S., 389;
Holden v. Hardy, 169 U. S., 366, 392;
Gorieb v. Fox, 274 U. S., 603, 608;
Lawton v. Steele, 152 U. S., 133, 136;
Jacobson v. Massachusetts, 197 U. S., 11, 30;
Muller v. Oregon, 208 U. S., 412;
People, ex rel. Selz v. Hesterberg, 211 U. S., 31;
Radice v. New York, 264 U. S., 292;
Nebbia v. New York, 291 U. S., 502, 537;
Booth v. Illinois, 184 U. S., 425, 429;
Chicago B. & Q. R. Company v. McGuire, 219 U. S., 549, 569.

A. **Enactment of Minimum Wage Laws For Women and Minors in Sixteen States Clearly Discloses An Existing Evil in Reference to the Wages of Such Employes.**

That female and minor employes are receiving oppressive and unfair wages for their services in many of the industrial states where women and minors are employed upon a large scale and that such wages constitute an existing public evil of great magnitude, is evidenced by legislative action of sixteen states[1] enacting laws similar to the law under attack in this case.

[1] Laws of New York, ch. 584, art. 19, passed April 29, 1933. California—(Hennings General Laws, edition 3 (Hyatt), 1920, Act 2107; session laws, 1929, ch. 256); Colorado—(Compiled laws, 1921 (published 1922), secs. 4262-4283, 4329); Connecticut—(Cumulative Supplement to the general statutes: 1931, 1933, ch. 131a, secs. 620b-633b); Illinois—(Session laws 1933, p. 597-604); Massachusetts—(Session laws 1933, ch. 308; 1935, ch. 267); Minnesota—(General Statutes, 1927, secs. 4033-4034, 4210-4232); New Hampshire—(Session laws 1933, ch. 87); New Jersey—(Session laws,

Such a universal recognition of an existing evil demonstrates that there is a real and not a fanciful factual basis for such legislation. Legislative recognition of an existing evil is a factor of great weight in determining the need of the exercise of the police power. This Court in the case of **German Alliance Insurance Company v. Lewis**, 233 U. S., 389, expressly recognized such a factor in the sixth paragraph of the headnotes which states:

> "A general conception of the law-making bodies of the country that a business requires governmental regulation is not accidental and cannot exist without cause."

See, also, **Whitfield v. State of Ohio**, decided by this Court on March 2, 1936.

1933, ch. 152); New York—(Session laws 1933, ch. 584); North Dakota—(Supplement to compiled laws, 1913-1925, secs. 396b3, 396b6-396b9, 396b11-396b16; session laws 1935); Ohio—(Session laws 1933, pp. 502-510); Oregon—(Session laws 1931, ch. 395; code, 1930, vol. 3, title 49, secs. 303-319); South Dakota—(Compiled laws 1929, sec. 1022-A-1022-E; session laws 1931, chs. 173, 174); Utah—(Session laws 1933, ch. 38); Washington—(Pierce's Code, 1929, secs. 4-3, 4-74, 4-75, 4-77, 4-82; 3526-3547); Wisconsin—(Statutes, 1931, secs. 20-57, 101.02, 104.01-104.12).

[1a] Minimum wage laws have been enacted in the following countries: Porto Rico, Great Britain, Canadian Provinces of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Quebec, Saskatchewan, Germany, Mexico, Union of South Africa, Czechoslovakia, Hungary, Uruguay, Spain, Italy, Chili, Ecuador, Costa Rica, Nicaragua, Cuba, Peru, Australia, New Zealand, Argentina, France and Norway.

POINT 5.

THERE IS A PRESUMPTION THAT LEGISLATION IS CONSTITUTIONAL UNTIL THE CONTRARY CLEARLY APPEARS.

The principle of presumption of constitutionality of a legislative act, and that all doubt must be resolved in support thereof is so well established that extended citation of decisions of this Court in support thereof is unnecessary. **California Reduction Company v. Sanitary Reduction Works**, 199 U. S., 306, 319; **Sinking Fund Cases**, 99 U. S., 700, 718. This presumption applies not only to the law itself but to the existence of the factual conditions which induced the legislative action.

Borden's Farm Products Company, Inc., v. Baldwin, 293 U. S., 194;

O'Gorman and Young v. Hartford Fire Insurance Company, 282 U. S., 251, 252.

POINT 6.

A MINIMUM WAGE LAW PASSED BY A STATE LEGISLATURE WHICH PERMITS THE FIXING OF A MINIMUM FAIR WAGE FOR WOMEN AND MINORS, SUCH WAGE BEING FIXED AT THE REASONABLE VALUE OF THE SERVICES RENDERED, IN THOSE INDUSTRIES WHERE IT IS FOUND THAT OPPRESSIVE AND UNREASONABLE WAGES ARE BEING PAID TO A SUBSTANTIAL NUMBER OF WOMEN AND MINORS, IS AN ACT WHICH RELATES TO AND PROMOTES THE PUBLIC HEALTH, WELFARE AND SAFETY, AND IS A REASONABLE AND VALID EXERCISE OF THE POLICE POWER OF A STATE AND VIOLATES NO PROVISION OF THE CONSTITUTION OF THE UNITED STATES.

It is "the duty of the court to inquire into the real effect of any statute". **Fairmont v. Minnesota**, 274 U. S., 1. The real effect of the New York Law under consideration and similar laws is quite clear. By requiring a minimum wage fixed according to value received to be paid women and minors employed in occupations wherein oppressive and unreasonably low wages are paid, such a law provides a fair return to an unorganized class of employes who are at the mercy of employers operating sweat-shops or who are unscrupulous in their dealings with their employes. The effect of this law is to obtain for women and minors a fair but not necessarily a subsistence or living wage.

A. **The Economic Evils Confronting the States.**

It is an economic principle that the existing economic dilemma results from the fact that we do not have purchasing power and that the economic cycle tends to become a vicious circle wherein the purchasing power of the mass of the people becomes progressively less. When that occurs, the public treasury must supplement the income of its citizenry. To break this vicious economic circle and to relieve the public from supporting those employes who because of their youth or sex and inability to bargain on a basis of equality and fairness with the purchaser of their labor, the legislators of Ohio and other states have concluded that the problem can be remedied only by providing for minimum wages for such employes. In so doing, the purchasing power of the general public is increased and the public treasury relieved of a burden that usually occurs when employes are denied work or are employed at wages that are not commensurate with the value of the service rendered. The New York Law proposes to fix a minimum wage for each particular occupation and employment in which a substantial number of women and minors are employed at oppressive and unfair wages. Is such an act forbidden under the Fourteenth Amendment to the Constitution of the United States? It is submitted that the answer is "No", especially when it is borne in mind that the minimum wage that is fixed is based on the minimum value of the service or labor rendered by the employe to her employer and is not based on what her actual needs might be in

order to secure a "living wage". It must be conceded that an employer under such a law cannot fix a wage that he might deem adequate for his employe, which wage might and does vary according to his standard of wages and ideas of competition. Under the law the employe and employer can contract for any wage that they might agree upon, except that it cannot be less than that fixed by law after investigation and hearing for a particular employment or occupation. In other words, the Legislature has attempted to fix a rule of conduct to which all employers of women and minors in a particular industry must adhere in the conduct of their business. This rule of conduct which takes the form of a minimum wage is not a capricious or arbitrary one but is one which is fixed by the administrators only after investigating, hearing and evaluating the worth of the particular service performed by the employe to the employer.

Since the beginning of the twentieth century a vast change has occurred in our social, economic and industrial life. Prior to the mechanization of industry and the growth of large urban centers, women were generally confined to the home in the capacity of superviser and converter of the raw materials raised or procured by the head of the family. Today women, married and single,

in order to supplement the income of the family or to support themselves, are forced to leave the confines of the home in order to become providers.[1] In 1890 less than fifty thousand married women were gainfully employed in Ohio and according to latest statistics there are slightly over one hundred and fifty thousand married women gainfully employed today in Ohio.[1] There has been a consistent increase in the number of women employed in industry in Ohio ranging from 246,071 in 1900 to 539,606 in 1930.[2] This increase in the employment of women in Ohio can be accounted for only because of the mechanization of industry with its resultant demand for cheap, unskilled or semi-skilled and yet dexterous operators. Women and minors have always been employed in preference to men whenever they could produce the same or better results at a less wage.[3] The labor of women and minors has always been regarded from time immemorial as cheap labor and the fact that women and minors are preferred in employment in the so-called non-

[1] The percentage of gainfully employed women in Ohio in various age groups in 1900 and in 1930 is as follows:

	1900	1930
10 to 24 years	19.8	22.2
25 to 44 years	14.5	23.3
45 years and over	9.2	13.8

See Appendix A.

[2] Fifteenth Census of the United States, 1930, Population Vol. IV, Occupations by States, Table I, page 1237.

[3] United States Department of Labor, Women's Bureau, **Variations in Wage Rates under Corresponding Conditions,** Bulletin No. 122, 1935. See Appendix B.

New York State Department of Labor, Bureau of Women's Industry, **The Industrial Replacement of Men by Women in the State of New York,** Special Bulletin No. 93, pages 27-29, 33. The United States Department of Labor, Women's Bureau, The Effects of Labor Legislation on the Employment Opportunities of Women, Bulletin No. 65, 1928, page 228.

durable goods industries over men and are paid lower wages, than men for similar work, is conclusive evidence that women and minors receive wages that are not commensurate with the value of the services rendered and that such employes being unorganized are not in a position to bargain equitably and fairly for their services.

In Ohio in 1926, on a study of the wage rates of men and women based on data gathered by the division of labor statistics of Ohio, it was found that women wage earners were paid at median rates[1] 52.76 percent of such rates for men; women clerical workers at 58.7 percent of the median rates for men; saleswomen at 47.02 percent of the median rate of salesmen and all women workers covered by the report of the division at a median rate of 56.10 percent of the median rate for men.[2] Similar differences in rates of wages paid women and men for similar work was found in the textile, clothing (men and women), hosiery and knit goods and rubber industry in Ohio.[3].

The division of minimum wage in the department of industrial relations, state of Ohio, found that in May, 1933, over 29 percent of the women covered by a survey of the laundry industry received less than six dollars a

[1] Median rate is midpoint in a series of items arranged in order of magnitude, half the items being above and half below this point.

[2] Information Bureau on Women's Work. **Wages, Rates, Earnings and Fluctuations of Employment in Ohio,** 1914-1926, pages 64, 69, 70.

[3] Information Bureau of Women's Work **Ohio Wage Earners in the Manufacture of Textiles and Textile Products** 1914-1927, pages 22, 42, 56, 66.

Information of Women's Work **Ohio Wage Earners in the Manufacture of Rubber Products,** 1914-1928, pages 21, 42.

week[1] and a survey and investigation of the dry cleaning industry also made by the division revealed that over 16 percent of the women employed therein received less than seven dollars per week in May, 1933.[2] The reports of the division of labor statistics of the state of Ohio show that a large proportion of gainfully employed women in Ohio in good and bad times in all industries is paid at rates of less than ten dollars per week. In 1932 over forty thousand women or one-fourth of all the wage-earning women in Ohio were paid wage rates of less than ten dollars a week. This number fell to 17,485 in 1934, but in 1929, a year of so-called relatively high wages, 18,320 or 8.4 percent of the women gainfully employed in Ohio were paid ten dollars or less. In 1929, 18.5 percent of the women were paid weekly rates of wages of less than twelve dollars. 43.7 percent received less than twelve dollars in 1932 and 19 percent were in this wage group in 1934.[3].

The ease with which women and minors can operate the mechanical devices now used in the industrial world, to produce goods and the fact that they can be employed at rates fifty to sixty percent less than those paid to men employes, has resulted considerably in the replacement of men in industry by women and minors. This result has contributed in some degree to the unemploy-

[1] Ohio Department of Industrial Relations, Division of Minimum Wage, report to the Laundry Wage Board relating to wages and hours of women and minors in the laundry industry in Ohio, January, 1934.

[2] The Ohio Department of Industrial Relations, Division of Minimum Wage, reports to the dyeing and cleaning wage Board relating to wages and hours of women and minors in the dyeing and cleaning industry in the State of Ohio, May 1934.

[3] Department of Industrial Relations, Division of Labor Statistics, Report No. 26, Rates of Wages, Fluctuations of Employment, Wage and Salary Payments in Ohio, 1929, and unpublished wage data compiled by the Division of Labor Statistics for 1932 and 1934.

ment problem confronting the nation, particularly in the industrial states like Ohio and New York. This Court can take judicial notice of the fact that the unemployment of men and likewise the difficulty of securing employment for them in industries in which women and minors have replaced them, has caused a drain upon the public treasuries of the nation, states and municipalities in the form of relief. This replacement problem and the unemployment of men that follows in its wake can be directly traced to the fact that women and minors who are not the chief providers of a family can be employed at rates less than those required to be paid to men. The fact that women and minors are generally not the principal providers of a family tends to make it possible for them to work at rates of wages which men and unmarried women performing the same kind of work cannot accept.

Employers in various industries have taken advantage of this economic and social condition to fix wages for women and minors which are arbitrary and not commensurate with the value of the services rendered to the employer. This fact has contributed greatly to the unemployment of men, which in turn has, as previously pointed out, caused a drain on the public treasuries to support the heads of families who have been replaced.

Although the making of private contracts is, as a general rule, free from governmental interference, it is subject to public regulation when the **public need** requires. **Nebbia v. New York**, 291 U. S., 502. It is submitted that in this case clearly and demonstrably the **public need** requires that contracts between women and minor employes and employers in industries where such employes are receiving "oppresive and unreasonable wages" (wages less than necessary to maintain

a minimum standard for health and wages less than the fair value of the services rendered) requires public regulation.

What is the great public need in the instant case?

Women and minor employes in certain industries are receiving wages less than the value of their services and less than sufficient for a minimum health standard. The state must necessarily be interested in their health and well-being.

Not only are such employes suffering in the laundry industry but the employers in the laundry industry are suffering because the ruthless competition in that industry is based primarily on "wage costs". Because of the lack of a fair wage standard for women and minor employes in the laundry industry, unscrupulous employers in this industry are constantly lowering wages, producing unfair competition against other employes in reducing such employes' purchasing power.

The payment of sweat-shop wages in many industries encourages and promotes "cut-throat" competition of an unwarranted and uneconomic kind and is detrimental not only to the employes but also to the employers therein and the public at large. The lowest standards of wages tend to become the highest standards and the overreaching employer competing directly with more scrupulous employers forces the latter to the same low wage level.

Men who cannot compete as well as thousands of women and children are forced onto the public relief rolls because of oppressive wages in many industries, thus pyramiding the constantly increasing burden of taxation.

Women and children on public relief rolls at the present time refuse to enter employment in an industry where the wages paid are oppressive and unreasonable, as it is against their own economic interest and is contrary to the rule of self-preservation if such wages in industry are less than what they receive on relief.

The public welfare depends upon the prevention of exploitation of women and minors in occupations of this type.

Public need and public policy are necessarily against having a particular industry conducted on a basis that will prove ruinous both to employes and employers in the particular industry, as well as to the general public.

This widespread and economic evil which has spread throughout the great industrial states, working to the material detriment not only of their people who are dependent upon a daily wage to exist, but to all citizens and the state itself on account of the ever increasing cost of relief with its mounting taxation demands, not only justified, but impelled the states to meet the situation with proper regulatory measures. Can it be said that the sovereign states are powerless to cope with such a situation which uncontrolled may well lead to their very destruction? A mere statement of the question impels the answer.

It is submitted that if the sovereign states under their reserved police powers are helpless to cope with this condition for the protection of their people in the face of economic development and mechanization, then the police power is a feeble thing which must fail when its exercise is most needed.

B. **Public Welfare Requires a State to Protect the Health of Women and Minors Gainfully Employed.**

The health and protection of women and minors in industry has always been deemed a matter of public concern in this country and statutes regulating or restraining the freedom of contract of women and minors in furtherance of that purpose have been upheld many times. **Bradwell v. Illinois**, 16 Wall., 130; **Muller v. Oregon**, supra; **Radice v. New York**, 264 U. S., 292; **Sturges and Burn Manufacturing Company v. Beauchamp**, 231 U. S., 320; **Miller v. Wilson**, 236 U. S., 373; and **Bosley v. McLaughlin**, 236 U. S., 385. The well-being of future generations requires that the health of women and minors be safeguarded from any environment which may affect their well-being and especially the well-being of their offspring. The physical welfare of the woman worker is a matter of great public concern to the commonwealth. It must be conceded that the problem of the health of women is to a large extent a problem of the race, as weakly constituted women cannot be mothers of healthy children and unfair and oppressive wages dictated by sweat-shop employers and conditions do not make it possible for women and minor workers to secure or maintain even a fair standard of physical well-being. The barest necessities of life cannot be obtained by women and minor workers who are employed at oppressive and unfair wages. **Investigation in Ohio of the laundry and dyeing and dry cleaning in-**

dustries reveals that the women and minors employed therein are receiving wages that are less than the amounts granted to the unemployed by public relief agencies.

The Legislatures of New York, Ohio and other states have found that unfair and oppressive wages paid to women and minors gainfully employed is a matter affecting the public health, safety, prosperity and welfare. Public welfare requires that such employes should not be taken advantage of by unscrupulous employers. The maintenance of a minimum wage in an industry where women and minors are employed at oppressive and unreasonable wages is imperative for the preservation of the public health, for the elimination of unfair cut-throat competition and for the maintenance and furtherance of fair competition.

C. **Oppressive and Unfair Wages Deter Women and Minors Who Are Receiving Public Relief from Seeking Employment.**

As previously pointed out, many industries today are paying wages to women and minors gainfully employed therein that are less than the amount granted by public relief agencies. Those persons who, if paid a minimum fair wage, would be eager to work in private industry, refuse to seek such employment for the reason that it would be to their economic and financial disadvantage to accept a wage which is less than the public grants as relief or charity. This fact tends to increase the public

debt and does not tend to reduce unemployment. If industry paid a wage commensurate with the services rendered, it necessarily would stand to reason that a recipient of public aid would more than welcome the opportunity to earn her own way than to be a ward of the public charity.

D. Police Power May Be Exercised to Prevent Unfair Competition.

It must be borne in mind that ruthless, unfair and cut-throat competition can occur only at the expense of labor, especially labor that is unorganized and in no position to bargain for a fair rate for the services to be rendered. Fair competition can be maintained only by requiring minimum wages to be paid to certain classes of employes gainfully employed in industries wherein oppressive and unreasonable wages are paid. Without minimum fair wages in those industries where a substantial number of women and minors are employed at wages less than the reasonable worth of their labor, chaos will eventually result.

It must be perfectly obvious that the problem of the individual worker in bargaining for a wage, changes substantially as the conditions of industry become more complex. In a frontier or agricultural or pre-industrial community, it may be a relatively simple thing for the wage bargain to be effected with little probability of over-reaching on either side. But when the highly organized industrial life is encountered, the situation

changes profoundly. And this change does not arise entirely from the centralization of **power** on the side of the employer, (although this is frequently referred to), but it comes also from a change in the **sources of information** which are available.

It is perfectly true that the enormous centralization of power in the hands of corporate employers may be conceived of as placing individual employes at a great disadvantage in their approach to an equitable wage bargain. But it is equally true, that this disadvantage is greatly magnified and rendered vastly more troublesome, by the almost complete lack of knowledge in the employes as to the actual worth of their services. This distinction seems to us to be a very real and very important one. It is quite true that with reference to some well organized and disciplined trade unions, this differential —both in sheer financial strength, and in available information as to the real worth of their services—is somewhat balanced through collective strength and collective bargaining. But it is equally true that among other groups, there is an almost total lack with reference to both phases of this problem.

Dealing, for the moment, with the lack of available information as to the real worth of their services, how can women and children in industry be expected to proceed to know the real value of their services? In our industrial centers, where industry dominates the whole community life, there is an immense problem of making available to those groups of employes who otherwise will

have little if any ability to know what their services are worth, the real facts of the situation.

No one, we submit, has the constitutional right to secure wage contracts with his employes at a price less than the services are worth, when that situation is brought about by reason of their helpless ignorance in bargaining for the wage contract.

It follows therefore, that a state such as New York or Ohio which is faced with this industrial problem, is warranted in believing that by setting up the machinery for determining the reasonable value of the services of some groups of women and children in industry, it is taking a practical means to prevent the unconscionable cheating of those who would otherwise be helplessly ignorant, and unable to protect themselves.

These results affect not only the employe and employer, but the general public as well. Is there anything in the Constitution which would require this Court to thwart the purpose of minimum wage laws in order to protect certain minority employers in underpaying their employes and underselling their competitors, to the detriment of other employers, employes and to their own ultimate destruction? This Court in the past has answered that question in the negative.

The recent decision of this Court in its present term of **Whitfield v. Ohio**, decided on March 2, 1936, is apposite. Here this Court recognized and upheld legislation enacted for the purpose of protecting industry and labor from the ruinous competition of prison-made goods, an evil which, like that in the case at bar, many states

had sought to remedy. In principle the two cases are directly analogous in that there the unrestricted sale of prison-made goods on the open market resulted in unfair competition with free labor and industry, and here the unregulated evils of sweat-shop wages paid to women and children has resulted in unfair competition with the majority who must earn a living wage. In the **Whitfield** case this Court recognized that the states have power to legislate against unfair competition and to protect their labor and industries.

Thus, it was held that a Legislature could fix prices in a business which was clothed with a public interest. **(Munn v. Illinois**, 94 U. S., 113); and fix insurance rates **(German Alliance Insurance Company v. Lewis**, supra); and fix the price of milk in an industry which affected the public welfare **(Nebbia v. New York**, supra). It is submitted that there is no substantial distinction between the fixing of prices to be paid for the storing of grain, insurance or milk, and the fixing of minimum wages for women and minors gainfully employed in industries where oppressive, unfair and unreasonable wages are being paid. This Court has said on many occasions that if the end to be accomplished relates to the public welfare, the means used to accomplish such result if not arbitrary or unreasonable, will be sustained. If that is true, then it necessarily must follow that the means used in minimum wage laws should be sustained even if the same takes the form of wage-fixing.

The extent to which a Legislature may use price-fixing as a means to an end is clearly set forth by Mr. Justice

Roberts, in the case of **Nebbia v. New York**, supra, at page 537, wherein he said:

> "So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the Legislature, to override it. If the laws passed are seen to have a reasonable relaiton to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court **functus officio.**"

It may be argued that, in a sense, the fixing of minimum wages for women and minors in industries where there is a finding that "oppresive and unreasonable" wages are being paid to such employes, is a "price-fixing" statute. However, this court has said in the case of **Nebbia v. New York**, supra, that an industry need not be a "public utility" before it may be subjected to price-fixing regulations. The case is also authority for the proposition that there is no magic in the labeling terms "affected with a public interest". In other words, as it is stated in the eleventh paragraph of the headnotes of the **Nebbia** case:

> "Decisions denying the power to control prices in businesses found not to be 'affected with a public interest' or 'clothed with a public use' must rest finally upon the basis that the requirements of due process were not met **because the laws were found arbitrary in their operation and effect.**" (Boldface ours.)

E. **This Court Has on Many Occasions Held That the Police Power of a State Can Be Exercised to Encourage Fair Competition and to Prevent Unfair Competition.**

Price-fixing which tends to preserve and promote fair competition, rather than to undermine it, was upheld by this Court in the **Nebbia** case and in the case of **Appalachian Coals, Inc., v. United States,** 288 U. S., 344, 360. That is, the exercise of the police power to encourage fair competition and to prevent unfair competition may take the form of "price-fixing". Although American business is traditionally competitive, the "price-fixing" of minimum wages for women and minors in an industry where oppressive and unreasonable wages are being paid to such employes, tends to preserve and promote the competitive system. Where competitive labor costs reach too low a level, as in industries where oppressive and unreasonable wages are being paid women and minors, efficient employers are unwilling to compete further on such a basis and the fixing of a fair minimum wage standard becomes necessary in order to maintain competition. The standard fixing "quantum meruit", or the reasonable value of the services rendered, is evolved from within the industry itself. The minimum wage law in question is not a general wage-fixing statute, but applies only to women and minors who are the lowest paid and exploited group, because unorganized. The fair wage fixed is the reasonable value of the services in relation to actual wages paid by efficient em-

ployers in the particular industry where a substantial number of women and minors are receiving wages less than sufficient to meet a minimum standard of health and less than the reasonable value of their services.

Likewise, the legislative determination to attempt by means of a minimum wage to protect industry from one source of unfair competition has a large and similar foundation in such statutes as the Federal Trade Commission Act, the Clayton Act and Interstate Commerce Act. These statutes all have as their purpose the elimination of unfair competitive practices. An employer who regularly pays less than a fair wage would have a definite and unfair advantage over his less grasping competitor were it not for the equalizing effect of such a statute. See **Central Lumber Company v. South Dakota,** 226 U. S., 157. Moreover, the standard fixed by the unscrupulous competitor generally becomes the standard for the entire industry, all to the detriment of the general public and the employes and employers engaged in said industry.

The case of **Nebbia v. New York**, supra, is another example of judicial approval of a law designed to prevent unfair competition and thus assist and indeed save industry even from its own irrational and illogical acts.

F. **Police Power May Be Exercised to Prevent Imposition, Exploitation and Fraud.**

It is a familiar rule of law that the police power of a state may be exercised to prevent the imposition, exploitation or the practice of fraud upon its citizens.

Hall v. Geiger-Jones Company, 242 U. S., 539.

Statutes regulating the size and weight of loaves of bread to prevent imposition, deception and fraud have been sustained by this Court (**Schmidinger v. Chicago**, 226 U. S., 578; **Peterson Baking Company v. Bryan**, 290 U. S., 570).

To prevent fraud and deception in the sale of securities, a law regulating and licensing the persons engaged therein was sustained in Hall v. Geiger-Jones Company, supra; and to prevent fraud and deception as to the ingredients of food.

Hutchinson Ice Cream Company v. Iowa, 242 U. S., 153.

Mr. Justice McKenna, in the case of Hall v. Geiger-Jones Company, supra, at page 552, said, in commenting about the case of **Hutchinson Ice Cream Company v. Iowa**, supra:

> "We have very lately decided a case upon the principle of the power of the state to prevent frauds and impositions."

Minimum wage laws tend to prevent imposition on a class of employes who are not in a position to bargain

fairly and equitably for a rate of wages commensurate with the services rendered. An employer who for various reasons pays an oppressive and unreasonable wage is guilty of defrauding and deceiving his female and minor employes who are compelled because of economic and social conditions to accept a rate of wages which is unfair and not what their labor is reasonably worth to the employer. It does not require statistics to support the statement that women and minors gainfully employed are compelled to accept rates of wages for their services that are fixed according to the standards of the employer and on a basis other than **quantum meruit.**

It has always been the policy of the Legislature to enact laws to prevent contracts that are unfair and coercive in their terms, especially when one of the parties to the contract is in a position of helplessness. Good examples of such laws are the usury statutes which are intended primarily for the prevention of contracts which are coercive and unfair. **Griffiths v. Connecticut,** 218 U. S., 563. If it is sound public policy and morality to restrain the bargaining power of one of the parties to a contract who is more powerful or in a better position to bargain than the other contracting party, then the enactment of a similar rule of public policy in the form of a minimum wage law should be sustained, especially when the legislative restriction is aimed at contracts which are likely to prove ruinous not only to the employe but also to other employers and employes engaged in the same industry as well as to the public at large. Legislation such as involved in **Griffiths v. Connecticut,**

supra, has been sustained on the principle that it is better public policy not to have loans made on a basis that is likely to prove ruinous to the borrower, so it is believed that it is better public policy not to have industry conducted on a basis that is likely to prove ruinous and detrimental to the employes engaged therein at wages both oppressive and unreasonable. If the Legislature can enact laws to prevent imposition on the public in respect to the purchase of foodstuffs and securities, it would therefore follow that a similar authority would exist by means of a reasonable minimum wage law to prevent employers from imposing upon their female and minor employes, who are taken advantage of because of the nature of their employment, their inability to organize, and their willingness to work at any wage to supplement the incomes of their families.

POINT 7.

THE NEW YORK MINIMUM WAGE LAW, PASSED IN THE LIGHT OF THE DECISION OF ADKINS v. CHILDREN'S HOSPITAL, 261 U. S., 525, IS SUPPORTED AS TO CONSTITUTIONALITY BY THE OPINION IN THAT CASE.

The Ohio Minimum Wage Law for women and minors and the New York Law in question, and similar laws in other states, are the result of conscientious effort by the various legislatures to meet the objections which a majority of the Supreme Court in 1923 found against the act of Congress regulating the wages of female and minor

employes in the case of **Adkins v. Children's Hospital**, 261 U. S., 525. With respect to the Adkins case it must be stated at the outset that the objections of the majority of the Court as represented by the majority opinion written by Mr. Justice Sutherland, was not to the **purpose** of the legislation in question, but to its **method**. Moreover, it is axiomatic that constitutional law decisions, presented by specific records involving precisely drawn issues, decide only the specific case and the issues presented to the court for its determination. The court does not decide general issues or pass upon all legislation of like character or purpose, or enacted to meet similar conditions, when only one type of legislation is present in the case before it. The issue presented and decided in the Adkins case was that a minimum wage statute enacted for the District of Columbia fixing an alleged fair minimum wage on a basis sufficient "to supply the necessary cost of living to women workers and to maintain them in health and to protect their morals", regardless of whether or not the services rendered to the employers were worth that sum, was unconstitutional as violative of the Fifth Amendment of the Federal Constitution. (A similar Arizona statute fixing a minimum wage on the same theory or basis was declared unconstitutional in an affirmance of a decision of the District Court of the United States for the District of Arizona in the case of **Murphy, Attorney General of Arizona, v. A. Sardell**, 269 U. S., 530, upon the authority of the Adkins case.) On the other hand, with respect to the fixing of a minimum fair wage on a totally different basis, the basis on which the mini-

mum fair wage is set in New York and Ohio and other states, namely, "wages fairly and reasonably commensurate with the value of the service or class of service rendered," it was said in the majority opinion in the Adkins case at page 569:

> "A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, **to pay the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the services,** would be understandable." (Boldface ours.)

The New York and Ohio Laws require that the amount to be paid and the services to be rendered shall bear to each other some relation of just equivalence, and hence being fair minimum wage statutes properly drawn containing all the provisions whose absence was condemned by the majority of the court in the Adkins case, clearly do not run counter to that decision.

The law enacted for the District of Columbia (40 Stat. L., 960 c. 174) provided for the fixing of minimum wages for women in **any occupation** in the District of Columbia through the medium of an administrative board. The board's function was to investigate conditions and wages of such employes and to set a minimum wage on a basis adequate **"to supply the necessary cost of living to women workers and to maintain them in health and to protect their morals."** The board also was empowered to set up standards of minimum wages for minors. Violation of the act was made a misdemeanor punishable by fine or imprisonment.

The principal infirmities of the District of Columbia

law, as voiced in the majority opinion should be summarized for the sake of clarity as applied to the case at bar:

1. The wage fixed by the board under the District of Columbia Law did not need to have any relation to the capacity or earning power of the employe. Stated affirmatively, an employer might be forced to pay more than the reasonable value of the services rendered by the employe.

In the case at bar, the minimum fair wage to be fixed "shall mean a wage fairly and reasonably commensurate with the value of the service or class of service rendered." Article 19, Section 551, Subdivision 2, of the Labor Laws of New York; Section 154-45d, General Code of Ohio. The statutes also permit lower rates for learners, apprentices and incapacitated workers. Article 19, Section 558, Subdivision 2, of the Labor Laws of New York, and Section 154-45k, General Code of Ohio.

2. (a) The wage fixed by the board did not need to have any relation to the number of hours which might happen to constitute the day's work; (b) the wage fixed by the board did not need to have any relation to the character of the place where the work was to be done; (c) the wage fixed by the board did not need to have any relation to the ability of the business to sustain the burden. In other words, it had no other basis than the necessities of the employe and took no account of the other party to the employment contract.

2. (a) **The New York statute challenged herein and the Ohio law do have a relation to the number of hours**

which happen to constitute a day's work. The "quantum meruit" or reasonable value of the services rendered fixes a wage for the reasonable value of an hourly wage for the working day. Moreover "all relevent circumstances affecting the value of the service or class of service rendered" are taken into account in fixing a fair wage. Article 19, Section 551, Subdivision 2, of the New York Labor Laws; Section 154-45d, General Code of Ohio.

(b) **The statutes are not general wage-fixing statutes but apply only to industries where a substantial number of women and minors are employed at wages both less than the value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health.** If such a wage is fixed for a certain occupation at the reasonable value of the services rendered, it necessarily follows that it takes into account both the character of the place where the work is done as well as the kind of service rendered.

(c) **The laws take into account the ability of the business to sustain the burden.** This is true because the wage being fixed "fairly and reasonably commensurate with the value of the service or class of service rendered", gives the employer a **quid pro quo**, and as to the only possible exception, an employer who is unable to pay his employes the reasonable value of their services rendered, such an employer is undoubtedly and unwarrantedly cheating the oppressed employe, and to the extent that the wage paid by him is less than sufficient to meet the minimum for a standard of health for the employe, such

employer is putting the burden upon the public to pay the difference and is thus placing upon the public the burden of paying the legitimate costs of his business.

Inasmuch as the fair minimum wage set is a wage "fairly and reasonably commensurate with the value or class of service rendered" and in establishing such wage the wage setting authority takes into account (1) "all relevant circumstances affecting the value of the services or class of services rendered", and (2) are guided "by like circumstances as would guide a court in a suit for the reasonable value of services rendered where services are rendered at the request of an employer without contract as to the amount of the wage to be paid" and are guided by considering (3) "the wages paid in the state for work of like or comparable character by employers who voluntarily maintain fair minimum wage standards" (Article 19, Section 551, Subdivision 2, of the Labor Laws of New York; Section 154-45d, General Code of Ohio), it is self-evident that such laws necessarily take into account both parties to the employment contract, rather than the employe alone.

3. This Court in the **Adkins** case distinguished the hours of labor decisions from the minimum wage case involved in the District of Columbia case in that the hours of labor statutes were limited to certain occupations, whereas the District of Columbia statute applied to all occupations.

The New York and Ohio statutes and similar minimum wage laws differ from the law held unconstitutional in the Adkins case in that they do not apply to all occupa-

tions, but only to those where investigation discloses the evil of "oppressive and unreasonable" wages present with respect to a substantial number of women and minor employes. Article 19, Sections 551 and 554, Subdivision 2 of the New York Labor Laws; Sections 154-45d and 154-45g, General Code of Ohio.

4. The standard, minimum wages adequate "to supply the necessary cost of living to women workers and to maintain them in health and protect their morals", was too uncertain as the necessary cost of living is not "a precise or unvarying sum."

The standard fixed by the New York and Ohio Minimum Wage statutes for women and minors is not an uncertain one as was present in the District of Columbia statute passed on in the Adkins case. The minimum fair wage means "a wage fairly commensurate with the service or class of services rendered" and "all relevant circumstances affecting the value of the service or class of service are taken into consideration." Article 19, Section 551, Subdivision 2, New York Labor Laws, and Section 154-45d, General Code of Ohio.

Such standard set by the Legislature is capable of reasonably definite application. Such a standard accords with the principles of our Anglo-American law of applying the standard of **reasonableness.** It is the practice that has governed the determination of rates for common carriers and of suits upon a quantum meruit for centuries. Certainly such standard, although not mathematically or mechanically perfect, is capable of **reasonably** definite and accurate application. Moreover, the

New York and Ohio laws permit differentiation in classes of services, lower minimum standards for learners and apprentices and special licenses for all those whose earning power has been impaired.

Having pointed out the chief objections to the District of Columbia statute ruled unconstitutional in the Adkins case and the complete absence of such infirmities in the New York and Ohio laws and similar laws of other states, the following language in the majority opinion in the Adkins case at pages 557, 558 and 559, serves to conclusively show that the **purpose** of minimum wage legislation was not condemned by this Court, the only condemnation having been the **method** of setting such a wage which existed in the legislation enacted by Congress for the District of Columbia, and it further serves to show that the statute challenged in the instant case is well within the police power of the state:

> "The law takes into account the necessities of only one party to the contract. It ignores the necessities of the employer by compelling him to pay not less than a certain sum, not only where the employee is capable of earning it, but irrespective of the ability of his business to sustain the burden, generously leaving, of course, the privilege of abandoning his business as an alternative for going on at a loss. * * * It compels him to pay at least the sum fixed in any event, because the employee needs it but requires no service of equivalent value from the employee. It therefore undertakes to solve but one-half of the problem. The other half is the establishment of the corresponding standard of efficiency, and this forms no part of the policy of the legislation. * * *"
>
> "The feature of this statute which, perhaps more than any other, puts upon it the stamp of invalidity

is that it exacts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract or the work the employee engages to do. The declared basis, as already pointed out, is not the value of the service rendered, but the extraneous circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health and morals. * * *

The moral requirement implicit in every contract of employment, viz., that the amount to be paid and the service to be rendered shall bear to each other some relation of just equivalence, is completely ignored. The necessities of the employee are alone considered, and these arise outside of the employment, are the same when there is no employment, and as great in one occupation as in another. Certainly the employer by paying a fair equivalent for the service rendered, though not sufficient to support the employee, has neither caused nor contributed to her poverty. On the contrary, to the extent of what he pays he has relieved it. In principle, there can be no difference between the case of selling labor and the case of selling goods. If one goes to the butcher, the baker or grocer to buy food, he is morally entitled to obtain the worth of his money but he is not entitled to more. If what he gets is worth what he pays he is not justified in demanding more simply because he needs more; and the shopkeeper, having dealt fairly and honestly in that transaction, is not concerned in any peculiar sense with the question of his customer's necessities. * * *

'A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the service, would be understandable. But a statute which prescribes payment without regard to

any of these things and solely with relation to circumstances apart from the contract of employment, the business affected by it and the work done under it, is so clearly the product of a naked, arbitrary exercise of power that it cannot be allowed to stand under the Constitution of the United States.'"

It is perfectly obvious that the foregoing language of this Court in the **Adkins case** supports rather than defeats the constitutionality of the New York Law herein challenged. This case is under no circumstances parallel with the case at bar and is no authority in support of the unconstitutionality of the New York Law. The New York Law, like the Ohio Law, was enacted in the light of the **Adkins** case and drawn to carry out the valid exercise of the police power expressly recognized in the majority opinion.

CONCLUSION.

It is submitted that the New York Minimum Wage Law provides for the establishment, after due investigation and public hearings, of minimum wages for women and minors in any particular industry in which, after such investigation and hearings, it is found that a substantial number of women and minors are receiving "oppressive and unreasonable" wages, which minimum wages so fixed are based upon the reasonable value of the service to the employer. Such a law enacted by many sovereign states for the protection of the public health and welfare, for the protection of their industries from ruinous competition of unscrupulous employers, for the

protection of an unorganized class of employes from receiving less than the true value of their services, and for the allieviation of unemployment with its attendant relief and taxation burden, contravenes no provision of the Constitution of the United States. Such legislation is vital to the preservation of the economic security of the states and should be sustained.

Many other states, including Ohio, having enacted laws similar to this New York Law held unconstitutional by the court of last resort of that state, it is submitted in conclusion that this Court should review the decision of the Court of Appeals of New York and upon final consideration thereof sustain the constitutionality of this New York Law.

Respectfully submitted,

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APPENDIX A.

TABLE III—PROPORTION OF FEMALES 10 YEARS OLD AND OVER GAINFULLY OCCUPIED, BY AGE, OHIO, 1900 AND 1930.

Age	Total Number	Gainfully Occupied	
		Number	Percent
1900[1]			
Total	1,626,326	246,071	15.1
10 to 24 years	608,188	120,603	19.8
25 to 44 years	596,445	86,450	14.5
45 years and over	419,524	38,624	9.2
Unknown	2,169	394	....
1930[2]			
Total	2,688,005	539,606	20.1
10 to 24 years	879,983	195,371	22.2
25 to 44 years	988,556	230,581	23.3
45 years and over	818,105	113,174	13.8
Unknown	1,361	480	....

[1] **Twelfth Census of the United States, 1900, Vol. II, Population,** pp. 78-79: **Special Reports, Occupations,** Table 41, p. 363.

[2] **Fifteenth Census of the United States, 1930, Population, Vol. IV, Occupations, by States,** Table 8, p. 1267.

APPENDIX B.

AVERAGE (OR MEDIAN) WAGES PER WEEK FOR FEMALES AND FOR MALES IN WOMAN-EMPLOYING INDUSTRIES IN OHIO, 1929, 1932, AND 1934.

	1929			1932			1934		
	Male	Female	Percent women's wages form of men's wages	Male	Female	Percent women's wages form of men's wages	Male	Female	Percent women's wages form of men's wages
All industries	$31	$16	51.6	$23	$13	56.5	$23	$14	60.9
Boots and shoes	27	16	59.3	20	12	60.0	22	15	68.2
Metal and metal products	29	17	58.6	22	14	63.6	21	14	66.7
Printing and publishing	33	16	48.5	28	14	50.0	27	14	51.9
Rubber products	36	20	55.6	26	14	53.8	28	16	57.1
Stone clay and glass	28	15	53.6	21	13	61.9	20	14	70.0
Men's clothing	33	19	57.6	22	13	59.1	26	15	57.7
Women's clothing	41	16	39.0	33	11	33.3	36	15	41.7
Hosiery and knit goods	24	17	70.8	19	13	68.4	19	15	78.9
Tobacco	22	15	68.2	19	11	57.9	18	13	72.2
Electrical machinery	30	19	63.3	23	14	60.9	22	15	68.2
Hospitals	21	14	66.7	18	12	66.7	16	13	81.3
Hotels	17	13	76.5	14	11	78.6	14	12	85.7
Laundries and dry cleaners	31	15	48.4	23	11	47.8	21	12	57.1
Restaurants	19	13	68.4	14	10	71.4	15	11	73.3
Stores retail and wholesale	27	16	59.3	23	13	56.5	20	14	70.0
Telephone and telegraph	28	17	60.7	31	18	58.1	32	18	56.3

67. Computed from wage data contained in Department of Industrial Relations, Division of Labor Statistics, **Report No. 26, Rates of Wages, Fluctuation of Employment, Wage and Salary Payments in Ohio, 1929,** Table I; and unpublished wage data compiled by the Ohio Division of Labor Statistics for 1932 and 1934.

PROPORTION OF MALES AND FEMALES WITH WEEKLY RATES OF LESS THAN $10 AND $20 AND OVER, IN 16 WOMAN-EMPLOYING INDUSTRIES IN OHIO, 1929, 1932, AND 1934.

Industry and Sex	1929		1932		1934	
	Percent with weekly rates of—		Percent with weekly rates of—		Percent with weekly rates of—	
	Less than $10	$20 and more	Less than $10	$20 and more	Less than $10	$20 and more
All industries:						
Males	1.7	88.1	6.9	63.1	3.3	62.0
Females	8.4	25.5	25.8	11.0	9.6	11.3
Boots, shoes, cut stock and findings:						
Males	1.6	73.7	8.4	51.6	4.5	58.8
Females	9.2	28.5	31.7	7.7	3.3	11.3
Metal and metal products:						
Males	0.6	87.8	2.5	61.7	0.7	57.2
Females	1.7	20.8	15.8	6.9	1.2	4.2
Printing and publishing:						
Males	11.0	73.8	13.0	68.8	8.7	68.3
Females	2.3	27.1	10.0	14.2	2.2	10.1
Rubber products:						
Males	0.3	95.6	0.4	81.5	1.9	85.8
Females	1.3	53.1	9.2	11.1	0.6	10.1
Stone, clay and glass:						
Males	0.9	84.4	4.0	53.0	1.1	46.1
Females	7.5	16.0	17.0	5.8	4.1	3.8
Men's clothing:						
Males	0.9	80.9	6.9	56.4	0.2	68.2
Females	5.2	43.2	30.5	12.7	2.3	23.2
Women's clothing:						
Males	1.1	89.0	2.6	79.1	....	82.1
Females	10.7	29.1	41.1	9.6	4.1	24.3
Hosiery and knit goods:						
Males	1.2	64.8	5.5	46.9	0.5	41.8
Females	3.7	27.7	15.5	12.4	2.3	14.4
Tobacco:						
Males	4.1	61.2	10.5	43.9	4.7	43.0
Females	18.6	10.0	35.4	0.5	14.5	0.3
Electrical machinery:						
Males	0.2	91.1	1.4	67.5	3.2	58.6
Females	1.0	41.1	9.4	7.8	2.8	8.6
Hospitals:						
Males	6.5	54.2	11.9	41.1	10.5	32.3
Females	28.4	31.3	32.8	23.5	29.3	21.6
Hotels:						
Males	12.8	39.0	26.0	26.5	21.4	21.8
Females	11.3	8.8	37.3	5.0	26.2	2.1
Laundries, dry cleaners:						
Males	1.3	85.9	5.6	61.1	2.7	56.3
Females	8.0	13.2	36.9	3.8	17.9	2.4
Restaurants:						
Males	7.7	44.4	23.9	23.3	11.6	20.0
Females	18.2	10.2	48.9	2.9	32.2	1.8
Stores, retail and wholesale:						
Males	2.8	80.4	5.9	62.9	4.0	51.3
Females	9.0	23.7	21.2	12.8	6.5	11.2
Telephone and telegraph:						
Males	6.1	82.0	10.0	78.7	12.6	72.9
Females	4.7	27.0	5.9	34.3	6.7	36.2